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UNITED STATES DISTRICT COURT  
IN THE DISTRICT OF ALASKA – FAIRBANKS

UNITED STATES OF AMERICA,  
for the Use and Benefit of WEBER,  
INC.,

Plaintiffs,

v.

NEESER CONSTRUCTION, INC.,  
an Alaska corporation; and  
LIBERTY MUTUAL INSURANCE  
COMPANY, Bond No. 023209448,  
a foreign corporation,

Defendants.

Case No.

COMPLAINT AGAINST  
MILLER ACT PAYMENT  
BOND

Plaintiffs, United States of America, for the use and benefit of Weber,  
Inc. (collectively “Weber”), allege as follows:

**I. PARTIES**

1. Weber is, and at all times material to this action was, a corporation organized and existing under the laws of the State of Alaska (Entity No. 53326D), and a licensed contractor under the laws of the State of Alaska (License No. 22484) and has met all other prerequisites to maintain this action.

COMPLAINT AGAINST MILLER  
ACT PAYMENT BOND – 1  
*Weber, Inc. v. Neeser Construction, Inc.*  
Case No.  
303944.1 | 102525.2

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1           2.     Neeser Construction, Inc. (“Neeser”), is the general/prime  
2 contractor on the Missile Field No. 4 Project – #W911KB19C0006 in Fort  
3 Greely, Alaska (“Project”).

4           3.     Liberty Mutual Insurance Co. (“Liberty”), on information and  
5 belief, is stated to be a Massachusetts corporation and is a compensated surety  
6 and bonding company for Neeser, and is authorized and licensed to do business  
7 and is doing business in the State of Alaska as a surety issuing bonds required by  
8 law or contract by the State of Alaska and various agencies within the  
9 jurisdiction of this Court.

## 10                               II.     JURISDICTION AND VENUE

11           4.     This Court has jurisdiction, as this case arises under the Miller Act,  
12 40 U.S.C.A. § 3131, *et seq.* In accordance with the Miller Act, and as part of its  
13 obligations pertaining to the Project, Neeser, as principal, and Liberty, as surety,  
14 provided to the United States of America a Performance and Payment Bond,  
15 Bond No. 023209448 (“Bond”). The Bond is attached as **Exhibit A**. Neeser  
16 and Liberty are each jointly and severally liable for full payment up to the penal  
17 sum of the Bond to persons and entities who supplied labor and materials in  
18 connection with the Project, including Weber.

19           5.     This Court also has jurisdiction over this dispute pursuant to  
20 28 U.S.C.A. §§ 1331, 1352, and 1367.

21           6.     This action involves a payment dispute on a Federal Government  
22 construction project in Fort Greely, Alaska. Venue is proper in this Judicial  
23 District, pursuant to 28 U.S.C.A. § 1391 and 40 U.S.C.A. § 3133(b)(3)(B),  
24 because the Project is located in this Judicial District, Defendant Neeser is  
25

1 located in this Judicial District, and the events or omissions giving rise to the  
2 claims occurred in this District.

3 **III. INTRADISTRICT ASSIGNMENT**

4 7. Pursuant to Local Rule 3.2, this action should be properly assigned  
5 to the Fairbanks Court, because Fort Greely, where a substantial part of the acts  
6 and/or omissions which give rise to Weber's claims occurred and also where the  
7 Project property that is the subject of this action is located, is in or near  
8 Fairbanks.

9 **IV. FACTUAL ALLEGATIONS**

10 8. Neeser contracted with the United States Army Corps of Engineers  
11 ("USACE") on the Project.

12 9. Neeser entered into a subcontract with Miranda Electric, Inc.  
13 ("MEI") wherein MEI would perform certain electrical work on the Project.

14 10. MEI entered into a subcontract with Weber wherein Weber would  
15 perform certain excavation, placement of bedding, and backfill of MEI's  
16 electrical trenching on the Project ("Subcontract").

17 11. Weber's scope of work was set out in its October 1, 2018 Quote to  
18 MEI and based on the exact dimensions of trenches provided by MEI ("Scope of  
19 Work").

20 12. Weber's Quote was fully incorporated into its Subcontract with  
21 MEI and defined the inclusions, exclusions, and parameters of Weber's Scope of  
22 Work on the Project.

1           13.    MEI directed Weber to perform significant excess excavation of  
2 the trenches included in Weber's Scope of Work, as well as excavation and  
3 backfill of vaults and sumps and the screening of backfill, all of which was  
4 beyond the scope of Weber's Subcontract.

5           14.    Weber agreed to perform this additional work based on MEI's  
6 assurances that MEI would pay Weber for it.

7           15.    However, when Weber requested payment, MEI terminated Weber  
8 based upon unsupported allegations of delay. Indeed, delays to Weber's work  
9 were caused by MEI's failure to provide Weber with the information Weber  
10 repeatedly requested and required in order to perform the work, as well as the  
11 failure of other contractors/subcontractors to perform the predecessor work  
12 necessary for Weber to work.

13           16.    MEI demanded Weber provide a plan and schedule to complete  
14 Weber's work, and when Weber timely did so, MEI refused to provide any  
15 feedback on the plan and schedule until it terminated Weber – claiming Weber's  
16 schedule did not adequately address issues MEI had not raised in its default  
17 notices.

18           17.    While Weber was promptly addressing MEI's alleged default  
19 concerns, MEI was coordinating with Neeser to take over Weber's Scope of  
20 Work.

21           18.    After wrongfully terminating Weber on September 3, 2020, MEI  
22 punitively insisted upon holding Weber's equipment, preventing Weber from  
23 utilizing the equipment even though MEI barely used the equipment before  
24 releasing it back to Weber on January 7, 2021 after repeated demands by Weber  
25 for its return.

1 **V. CAUSE OF ACTION**

2 **CLAIM AGAINST PAYMENT BOND UNDER MILLER ACT**

3 19. At the time of filing suit, more than ninety (90) days, but less than  
4 one (1) year, have expired from the last date upon which Weber furnished labor,  
5 equipment, and materials to the Project (January 7, 2021). Weber first provided  
6 Neeser with notice of its Miller Act claim on October 6, 2020, and supplemental  
7 / amended notices on December 16, 2020 and February 8, 2021. Weber has  
8 otherwise satisfied all the requirements for pursuing a claim against the Bond.

9 20. In accordance with the terms of the Bond and Miller Act, Neeser  
10 and Liberty are jointly and severally liable to Weber for a sum not less than  
11 \$1,173,274, or such other sum as will be proven at trial, together with interest at  
12 the maximum rate legally permissible from the date said sums were due, costs,  
13 attorneys' fees, and such other amounts as may be proven at trial and to which  
14 Weber is entitled either by statute or under the Subcontract.

15 **VI. STAY PENDING ARBITRATION**

16 21. Weber's claims against MEI for breach of contract and wrongful  
17 termination are pending in arbitration.

18 22. Pursuant to the Miller Act (40 U.S.C.A. §§ 3131-3134), Weber is  
19 required to bring this action in federal court to preserve its statutory rights. By  
20 bringing this action, Weber is not waiving any contractual requirements under  
21 the Subcontract, including arbitration, but is simply preserving its rights.  
22 Accordingly, with a full reservation of rights, Weber requests this matter be  
23 stayed pending the completion of the arbitration currently proceeding against  
24 MEI.

25  
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1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Weber requests Judgment as follows:

3 A. Against Neeser and Liberty, jointly and severally, for a sum not  
4 less than \$1,173,274, or such other sum as will be proven at trial, plus interest at  
5 the maximum rate legally permissible from the date said sums were due, the late  
6 payment interest penalty as provided under the Prompt Payment Act, attorneys'  
7 fees, and costs in an amount to be proven at the time of trial;

8 B. Attorneys' fees and costs in accordance with the Subcontract or  
9 other applicable law; and

10 C. For such other and further relief as the Court may deem just and  
11 equitable.

12 D. That this matter be stayed pending the completion of the  
13 arbitration currently proceeding against MEI.

14 DATED: This 1<sup>st</sup> day of September, 2021.

15 **AHLERS CRESSMAN & SLEIGHT PLLC**

16  
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COMPLAINT AGAINST MILLER  
ACT PAYMENT BOND – 6  
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